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Diversity of Thought and Respecting the Other Side of the Argument: Insights from the Office of the U.S. Solicitor General

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OCTOBER 11, 2018



Diversity of Thought and Respecting the Other Side of the Argument:

**Insights from the
Office of the U.S.
Solicitor General**

PROGRAM OF EVENTS

OPENING

Mark D. West

*Dean, University of Michigan Law School
Nippon Life Professor of Law*

WELCOME

Mark S. Schlissel

President, University of Michigan

INTRODUCTION OF PANELISTS

Timothy G. Lynch

Vice President and General Counsel, University of Michigan

PANEL DISCUSSION

Paul D. Clement

Partner, Kirkland & Ellis, and Distinguished Lecturer in Law, Georgetown University Law Center

Charles Fried

Beneficial Professor of Law, Harvard Law School

Gregory G. Garre

Partner and Global Chair of the Supreme Court and Appellate Practice Group, Latham & Watkins

Ian H. Gershengorn

Partner and Chair of the Appellate and Supreme Court Practice Group, Jenner & Block

Nicole A. Saharsky

Partner and Co-Chair of the Appellate and Constitutional Law Practice Group, Gibson Dunn

Julian Davis Mortenson (moderator)

Professor of Law, University of Michigan Law School

PANELIST BIOS



Paul D. Clement

Partner, Kirkland & Ellis, and Distinguished Lecturer in Law, Georgetown University Law Center
Solicitor General, 2005-08
Acting Solicitor General, 2004-05
Principal Deputy Solicitor General, 2001-04

Paul Clement served as the 43rd Solicitor General of the United States from June 2005 until June 2008. Before his confirmation as Solicitor General, he served as Acting Solicitor General for nearly a year and as Principal Deputy Solicitor General for more than three years. Clement has argued more than 90 cases before the U.S. Supreme Court, including 30 times in just the last five terms. He has argued more Supreme Court cases since 2000 than any lawyer in or out of government. His practice focuses on appellate matters, constitutional litigation, and strategic counseling, and he represents a broad array of clients in the Supreme Court and in federal and state appellate courts. Following law school, Clement clerked for Judge Laurence H. Silberman of the U.S. Court of Appeals for the D.C. Circuit and for Associate Justice Antonin Scalia of the U.S. Supreme Court. After his clerkships, he served as Chief Counsel of the U.S. Senate Subcommittee on the Constitution, Federalism and Property Rights. Clement is a Distinguished Lecturer in Law at the Georgetown University Law Center, where he has taught in various capacities since 1998, and a Distinguished Lecturer in Government at Georgetown University. He also serves as a Senior Fellow of the Law Center's Supreme Court Institute.



Charles Fried

Beneficial Professor of Law, Harvard Law School
Solicitor General, 1985-89

Educated at Princeton, Oxford, and Columbia Law School, Charles Fried, the Beneficial Professor of Law, has been teaching at Harvard Law School since 1961. He served as the 38th Solicitor General of the United States, 1985-89, and an Associate Justice of the Supreme Judicial Court of Massachusetts, 1995-99. His scholarly and teaching interests have been moved by the connection between normative theory and the concrete institutions of public and private law. During his career at Harvard he has taught Criminal Law, Commercial Law, Roman Law, Torts, Contracts,

Labor Law, Constitutional Law and Federal Courts, and Appellate and Supreme Court Advocacy. The author of many books and articles, his *Anatomy of Values* (1970), *Right and Wrong* (1978), and *Modern Liberty* (2006) develop themes in moral and political philosophy with applications to law. *Contract as Promise* (1980), *Making Tort Law* (2003, with David Rosenberg) and *Saying What the Law Is: The Constitution in the Supreme Court* (2004) are fundamental inquiries into broad legal institutions. *Order & Law: Arguing the Reagan Revolution* (1991) discusses major themes developed in Fried's time as Solicitor General. In recent years Fried has taught Constitutional Law and Contracts. During his time as a teacher he has also argued a number of major cases in state and federal courts, most notably *Daubert v. Merrell Dow Pharmaceuticals*, in which the Supreme Court established the standards for the use of expert and scientific evidence in federal courts.



Gregory G. Garre

Partner and Global Chair of the Supreme Court and Appellate Practice Group, Latham & Watkins
Solicitor General, 2008-09
Principal Deputy Solicitor General, 2005-08
Assistant to the Solicitor General, 2000-04

Gregory Garre served as the 44th Solicitor General of the United States after being unanimously confirmed to the position by the U.S. Senate. He also served as Principal Deputy Solicitor General and as an assistant to the Solicitor General. He is the only person to have held all of those positions within the Office of the Solicitor General. Garre has argued 43 cases before the U.S. Supreme Court and has briefed and served as counsel of record in hundreds of additional cases before the Court at both the merits and certiorari stage. He handles a broad array of complex litigation matters at all levels of the federal and state court systems and counsels clients on constitutional, statutory, regulatory, and other legal matters. He frequently has prevailed in the most hard-fought cases before the Supreme Court and before the federal and state courts of appeals, and also has handled numerous cases before the Federal Circuit. Following his graduation from law school, Garre served as a law clerk to Chief Justice William H. Rehnquist and to Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit.

Ian H. Gershengorn



Partner and Chair of the Appellate and Supreme Court Practice Group, Jenner & Block
Acting Solicitor General, 2016-17
Principal Deputy Solicitor General, 2013-16

Ian Gershengorn is one of the nation's premier U.S. Supreme Court and appellate advocates. He served in the Office of the Solicitor General at the U.S. Department of Justice (DOJ), first as Principal Deputy Solicitor General and then as Acting Solicitor General of the United States, a position he held from June 2016 until the end of the Obama administration in January 2017. His practice focuses on advising clients on a range of complex litigation and strategy problems, with particular emphasis on commercial disputes and challenges involving government, regulatory, and other public policy issues. While at the Office of the Solicitor General, Gershengorn argued more than a dozen cases at the U.S. Supreme Court. He also supervised the government's briefing in a range of high-profile cases, including those involving the Affordable Care Act, Dodd-Frank, election law and redistricting, immigration reform, the Fair Housing Act, Title VII, the Religious Freedom Restoration Act, and same-sex marriage. Prior to his service in the Solicitor General's office, Gershengorn served as the Deputy Assistant Attorney General in charge of the DOJ's Federal Programs Branch. He also supervised the defense of federal agencies, the President, cabinet officers, and other government officials in challenges to major regulatory and policy initiatives, including those relating to financial regulation, immigration, executive privilege, and national security matters such as drone strikes, CFIUS, and detainees at Guantanamo Bay. From 1997 to 2009, Gershengorn practiced as an associate and then as a partner at Jenner & Block. He started his career at the DOJ, serving as counsel to Deputy Attorney General Jamie S. Gorelick and then as assistant to Attorney General Janet Reno.



Nicole A. Saharsky

Partner and Co-Chair of the Appellate and Constitutional Law Practice Group, Gibson Dunn
Assistant to the Solicitor General, 2007-17

Nicole A. Saharsky served for 10 years as an Assistant to the Solicitor General in the U.S. Department of Justice, where she briefed and argued cases in the U.S. Supreme Court and provided advice regarding government appeals in the lower federal courts. She has argued 29 cases, briefed 45 cases on the merits, and filed hundreds of certiorari-stage briefs and motions in the U.S. Supreme Court. Her cases involved a broad range of business issues, including securities, intellectual property, labor and employment, bankruptcy, personal jurisdiction, and corporate criminal liability. She also advised government agencies about issues and appeals in the lower federal courts. Before joining the Office of the Solicitor General, Saharsky was an associate at O'Melveny & Myers, specializing in appellate law. She also served as a Bristow Fellow in the Office of the Solicitor General and clerked for Judge Carolyn Dineen King of the U.S. Court of Appeals for the Fifth Circuit.



Julian Davis Mortenson (*moderator*)

Professor of Law, University of Michigan Law School

Julian Davis Mortenson specializes in constitutional and international law. His research focuses on the process of establishing constitutional structure. He also is an active litigator. Representative constitutional matters include his service as lead counsel in a pre-*Obergefell* suit that required Michigan to recognize the marriages of more than 300 same-sex couples; his work advising gun control groups on litigation and legislative reform; his representation of discharged military service members challenging the "Don't Ask, Don't Tell" law; and his work as one of the principal drafters of the merits briefs in *Boumediene v. Bush*, which secured the right of Guantanamo detainees to challenge their incarceration. Before joining the faculty, Mortenson worked at WilmerHale, in the President's Office of the International Criminal Tribunal for the former Yugoslavia, and as a law clerk for Supreme Court Justice David H. Souter and The Hon. J. Harvie Wilkinson III of the Fourth Circuit Court of Appeals.



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